

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETROLIAM NASIONAL BERHAD,

Plaintiff,

No. C 09-5939 PJH

v.

ORDER

GODADDY.COM, INC.,

Defendant.

The court has reviewed the documents submitted by plaintiff Petroliam Nasional Berhad in support of its motion for partial summary judgment and in opposition to defendant's motion for summary judgment. In each instance, plaintiff includes a variety of documents assembled into an "Appendix of Fed. R. Civ. P. 56(c)(1)(A) materials." Rule 56(c)(1)(A) sets forth the requirement that "[a] party asserting that a fact cannot be or is genuinely disputed must support the assertion by" citing to "materials in the record." The Advisory Committee Notes to the 2010 amendments, to which plaintiff refers, state that an assertion that a fact can or cannot be genuinely disputed may be supported by citation to an appendix containing materials that "are in the record."

A trial court can consider only admissible evidence in a ruling on a motion for summary judgment; "unauthenticated documents cannot be considered in a motion for summary judgment." Orr v. Bank of America, NT & SA, 285 F.3d 764, 773 (9th Cir. 2002); see also Las Vegas Sands, LLC v. Nehme, 632 F.3d 526, 532-33 (9th Cir. 2011). Here, plaintiff has assembled a collection of materials, but has not identified them or provided any authentication. Thus, the materials, which are not admissible in their present form, are not "in the record."

1 In addition, the materials are not presented in a form that is usable by the court. The
2 "Appendix" in support of plaintiff's motion for partial summary judgment consists of more
3 than 200 pages of miscellaneous documents, and the "Appendix" in support of plaintiff's
4 opposition to defendant's motion for summary judgment consists of what appears to be
5 nearly 3500 pages of miscellaneous documents. These documents include deposition
6 excerpts, discovery responses, copies of web pages, e-mails, papers that were previously
7 filed in this case and related case 10-3052, and numerous other documents that the court
8 cannot even attempt to categorize.

9 The Appendices are STRICKEN. If plaintiff wishes the court to consider these
10 materials as evidence in support of its motion or its opposition to defendant's motion,
11 plaintiff must present them in a form that complies with the Federal Rules of Evidence. The
12 documents must also be presented in a form that is usable by the court, which means that
13 they must be attached to a supporting declaration, and must be separately tabbed. The
14 deadline for complying with this order is Friday, November 25, 2011.

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16 **IT IS SO ORDERED.**

17 Dated: November 22, 2011



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19 PHYLLIS J. HAMILTON
20 United States District Judge
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